MT LEGISLATIVE HISTORY

Chapter 68 1989

Bill H 13 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	C	Hearing Date(s) _____	C
1/11	✓ C	3/28	C
_____	C	_____	C
_____	C	_____	C
Date Out 1/18	✓ C	3/28	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 13

INTRODUCED BY QUILICI

BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE HOUSE

DECEMBER 30, 1988	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 2, 1989	FIRST READING.
JANUARY 19, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 20, 1989	PRINTING REPORT.
JANUARY 21, 1989	SECOND READING, DO PASS AS AMENDED.
JANUARY 23, 1989	ENGROSSING REPORT.
JANUARY 24, 1989	THIRD READING, PASSED. AYES, 97; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 28, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 2, 1989	PASS CONSIDERATION.
MARCH 3, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 7, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 13

INTRODUCED BY QUILICI

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO CHANGE THE DEFINITION OF "CRIMINALLY INJURIOUS CONDUCT"; TO ALLOW THE DIVISION OF CRIME CONTROL TO OBTAIN CERTAIN MEDICAL REPORTS AND INSURANCE PAYMENT INFORMATION REGARDING A CLAIMANT; TO CLARIFY THAT FUNDING FOR THE PROGRAM MAY BE USED ONLY FOR THE PROGRAM; TO PROVIDE THAT A FISCAL BIENNIUM END BALANCE OVER $200,000 MAY BE DEPOSITED IN THE GENERAL FUND; TO ALLOW PAYMENTS TO CERTAIN CLAIMANTS TO CONTINUE FOR MORE THAN 1 YEAR; AMENDING SECTIONS 50-16-530, 53-9-103, 53-9-104, 53-9-109, AND 53-9-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE FOR THE USE OF CERTAIN FUNDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-530, MCA, is amended to read:

"**50-16-530. Disclosure without patient's authorization -- other bases.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another; or

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or

~~(5)~~(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536."

Section 2. Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

INTRODUCED BILL
HB 13

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle ~~as-described-in-Title~~ 61 unless the bodily injury or death was purposely inflicted.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious

conduct."

Section 3. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of division. (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to

victims, dependents of deceased victims, and the county reimbursement for any public defender or any attorn appointed for the charged person must be deposited in t account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys a law enforcement officers investigations and data to enab the division to determine whether and the extent to which claimant qualifies for compensation. A statute providi confidentiality for a claimant's juvenile court records do not apply to proceedings under this part.

(b) request and obtain from a health care provid medical reports that are relevant to the physical conditi of a claimant or from an insurance carrier, agent, or clai adjuster insurance payment information that is relevant expenses claimed by a claimant. No civil or crimi liability arises from the release of information reques under this subsection (b).

~~(b)~~(c) subpoena witnesses and other prospect evidence, administer oaths or affirmations, cond hearings, and receive relevant, nonprivileged evidence;

~~(c)~~(d) take notice of judicially cognizable facts general, technical, and scientific facts within specialized knowledge; and

~~(d)~~(e) require that law enforcement agencies

officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part."

Section 4. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. There is a crime victims compensation account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol. The money in the account is to be used solely for the purposes of this part, except that a cash balance in the account in excess of $200,000 at the end of a fiscal biennium may be deposited in the general fund."

Section 5. Section 53-9-128, MCA, is amended to read:

"53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a

maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse

and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $2,000, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments shall

continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of

a sexual crime for which a person has been charged and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $500 for each person or $1,500 for a family. ~~Payments must terminate 1 year after a claim is filed under 53-9-125.~~"

Section 6. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. Effective date -- retroactive applicability. (1) [This act] is effective on passage and approval.

(2) [Section 4] applies retroactively, within the meaning of 1-2-109, to compensation claims filed after October 1, 1987.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 11, 1989, at 8:06 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Eudaily

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 13

Presentation and Opening Statement by Sponsor: Rep. Quilici, House District 71, stated that this bill will revise the crime victims compensation act, capping a fund of $200,000.00. Over the years there has been a numerous amount of amendments to make the act more compatible with the innocent victims of crime. The amendments change the definition of criminally injurious conduct, and allows the Crime Control Division to obtain certain medical and insurance reports. According to the administrator these funds should be adequate under the existing statute to handle the innocent victims of crime. Anything over the $200,000.00 will revert to the general fund.

List of Testifying Proponents and What Group They Represent:

Cheryl Bryant, Crime Victims Unit
Jerry Loendorf, Montana Medical Association

List of Testifying Opponents and What Group They Represent:

Jim Ahrens, Montana Hospital Association
Steve Browning, State Farm Insurance

Testimony:

Cheryl Bryant stated that the purpose of the crime victims compensation act is to compensate and assist innocent victims who are injured as a direct result of the criminal acts of others. This bill will help to lessen or eliminate the paper work that an innocent victim would have to do on their own claim. It will also be much easier and faster to process these claims by allowing a statutory release of insurance and medical records. This change in the law will allow the necessary information so a claim can be paid in a timely manner without any extra work on the behalf of the innocent victim or without exposing the medical provider or insurance company.

Jerry Loendorf commented that the aspect of this bill that the Mont. Medical Assoc. (MMA) is interested in is the waiver of privilege of the patient. This permits the Board of Crime Control to obtain patients records without the patient's authorization. This provision is generally consistent with the existing law; Rule 35-B-2, which requires that a person waives his privilege concerning his physical condition when he files a claim in court concerning that physical condition. This bill, with respect to people who file claims for crime victims compensation, states that once they make their physical condition an issue they then waive that privilege and records can be obtained to check if the condition their claiming actually exists.

In opposition to HB 13, Jim Ahrens stated that this bill and the section on the release of medical records puts the Montana Hospital Assoc. (MHA) in a difficult position. The medical record is a private document between the patient and the facility and/or the treating physician.

Questions From Committee Members: Rep. Brown asked Cheryl Bryant the difference between the Hospital Association and the Montana Medical Association. Mrs. Bryant gave as an example an incest case where the offender was the one insured and also had the right to the records. In cases such as this, the Dept. has been unable to get any cooperation from the offender. Another example was when the natural father of the child was the insured. They did not know what his name or location was to get this information so they could not make the appropriate amount of the payments.

Rep. Brown continued by asking why the uniform health care information act does not cover this bill in its original form. Why is the additional language needed? Mrs. Bryant replied by stating that John MacMaster did the legislation drafting and the uniform health care act was amended because there is no catch-all provision that says "as provided by law."

Rep. Boharski, referring to page 7, line 15 of the bill questioned the word "may" be deposited to the general fund. It was to his understanding that it should read "shall". Mrs. Bryant stated that there is no particular reason as the why it is written that way, that it is just a permissive use. Rep. Quilici stated that the intent is anything over $200,000.00 will be reverted to the general fund, and if appropriate, would be willing to change the word to "shall".

Rep. Hannah questioned Mrs. Bryant if she had an approximate figure as to how much of the funding was currently going into mental health counseling. She stated that for the secondary victims it is a very small amount, approximately $200.00. She also stated that the mental health counseling became effective October 1, 1987 and since that date they have only had about 20 claims filed.

Rep. Mercer questioned the opponents as to putting a blanket consent on the standard claim form. Mr. Browning stated that it would be creating an exception that is too broad.

Closing by Sponsor: Rep. Quilici stated that without the release of these reports, there is no way to find out if the innocent victim was insured or if they have been paid for health costs by the insurance company. In many cases it is difficult to reach the innocent victim or guardian of, and are therefore unable to attain the information needed. This bill would allow for the information to be obtained directly from the medical provider or insurance company. Rep. Quilici strongly expressed that in no way will the privacy act by abused.

DISPOSITION OF HOUSE BILL 13

Motion: No motions.

Discussion: None.

Amendments and Votes: None.

Recommendation and Vote: Close the hearing on House Bill 13. No action taken.

EXECUTIVE SESSION HOUSE BILL 27

Motion: Rep. Darko made a DO PASS motion, seconded by Rep. Nelson.

Discussion: Rep. Addy expressed to the committee that killing in any way is wrong, and why is it right for them to deliberately decide to put someone to death whether they are an innocent victim or whether they are a criminal. This bill would basically give the State the ability to control life.

Rep. Brooke stated that we as a society cannot continue the killing. She feels that if we break the cycle of killing that we are making a statement against violence and killing.

Recommendation and Vote: A Roll Call Vote was called for on the DO PASS motion and CARRIED with 13 voting aye, and 4 nays.

EXECUTIVE SESSION HOUSE BILL 42

Motion: Rep. Hannah offered a DO NOT PASS motion, seconded by Rep. Daily.

Discussion: Rep. Hannah stated that he feels this bill would create more problems than it would solve, particularly in the small towns of Montana.

Rep. Stickney does not see any problems with this bill since the final decision will be left up to the local community to enact the kind of provision they chose to. She doubts that any community that would be affected by this bill would enact it, whereas those communities that want to control the situation can act on it to the communities benefit.

Amendments and Votes: Rep. Brown presented for the committee's review proposed amendments to HB 42 (EXHIBIT 1).

Motion: Rep. Gould made a substitute motion to TABLE HB 42, motion seconded by Rep. Hannah. A Roll Call Vote was taken and FAILED with 5 ayes and 12 nays.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 11, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY			X
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. 13 DATE JAN. 11, 1989

SPONSOR QUILICI

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Maureen Lassey	Leg Auditor	✓	
Judi Knapp			
Jim DeCock			
Cheryl Bryant	Crime Victims Unit	✓	
Marin Oye	Board of Crime Control	✓	
Mike Lachin	Justice	✓	
Jim Ahrens	MT Hospital Assoc		
Steve Browning	MT Hosp Assoc/State Fund		✓
Jerome Loendorf	Mt. Med. Assn	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

funded entirely through the County.

Rep. Hannah questioned Rep. Spaeth as to what was exactly being filed and what was being required on the part of the county. Rep. Spaeth stated that the Justice Court follows the same procedures as the County Court but because of the increase in the case loads they must raise the fees.

Rep. Brown questioned Mr. Morris as to what an approximate percentage of total funding of Justice Courts and Counties would be. Mr. Morris guessed that 50% would come from fines, 10% comes from fees, and the remaining 40% comes from property taxes.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 107

Motion: Rep. Nelson made a DO PASS motion, seconded by Rep. Strizich.

Amendments, Discussion and Votes: Rep. Addy moved to strike section 2 from the bill, motion seconded by Rep. Wyatt. As a substitute motion Rep. Addy then moved to amend pg. 2, line 5; strike 15 and insert 10. Motion seconded by Rep. Strizich.

A vote was taken on Rep. Addy's proposed amendments and CARRIED with Rep. Hannah voting No.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, motion seconded by Rep. Darko.

Discussion: Rep. Hannah feels that this bill is constructive, as he has seen over the years more fee bills enter the counties and local governments, attracting more attention to them. What used to be functions that were handled through the general fund are now being transferred over to fees and charges, still maintaining the general level of taxes.

Rep. Addy expressed that this is not being shifted onto the people who need the court services, ultimately this is being shifted to the non-prevalent party.

A vote was taken on the DO PASS AS AMENDED motion and CARRIED with Rep. Hannah voting No.

DISPOSITION OF HOUSE BILL 13

Motion: A DO PASS motion was made by Rep. Darko, seconded

by Rep. Wyatt.

Amendments, Discussion and Votes: Rep. Mercer proposed amendments shown as EXHIBIT 1. Motion seconded by Rep. Eudaily.

Rep. Hannah questioned Rep. Mercer as to the wording of the amendments "purposely, knowingly, or either or both, as an element of the offense". Rep. Mercer stated that if a person gets a bodily injury from someone or something that was purposely inflicted, such as a motor vehicle, it would not be covered under the current law. However, when all motor vehicle accidents are excluded there is a guide created to then use a car as a weapon. This type of an accident would not be covered under the crime victims act because the law has excluded all motor vehicle victims. HB 13 would allow for coverage under this type of an accident due to the fact that it is not a negligent crime such as a D.U.I.

Rep. Addy offered a friendly amendment to strike the word "all" on pg. 6, line 16. A vote was taken and CARRIED unanimously.

Rep. Boharski presented to the committee proposed amendments shown as EXHIBIT 2, motion seconded by Rep. Stickney. Rep. Addy made a substitute motion on pg. 1, line 11 to strike everything from the semi-colon to line 14 semi-colon. Page 7, section 4, strike all the new language. Motion seconded by Rep. Strizich.

Rep. Addy stated that he feels there is a reason that we levy 18% of the fines assessed in bails forfeited to this fund and that is to assist victims of crime. Putting this money into the general fund means taking it away from victims of crime.

Rep. Mercer, in opposition to Rep. Addy's motion as well as Rep. Boharski's motion stated that he feels this is a self defense action by the crime victims act people. The intent is to put the amount of $200,000.00 into the fund so that people will not steal or rob from the fund below that amount. He feels that the money should be left in the fund unless there is an emergency reason for withdrawing from it.

Rep. Hannah stated that if the language of this bill is not left the way that it is there could be a movement toward reducing the amount of 18%. He feels there would be a greater possibility to maintaining the money towards the use that it is intended to by leaving the

language and percentage of the bill the way that it currently is. Rep. Wyatt spoke in agreement with Rep. Hannah.

Rep. Brown stated that he agrees with Rep. Addy's logic, but would be willing to try going with the language as proposed because of the robbing of the fund in the past. It gives one more piece of the statute to point to. It is the legislatures intent that this fund should not be subject to raid and opposes both proposed amendments.

A Roll Call Vote was taken on Rep. Addy's substitute amendment at the request of Rep. Brooke and FAILED with 6 ayes, and 11 nays.

Rep. Boharski requested of the committee to withdraw his proposed amendments.

Rep. Eudaily moved to amend pg. 11, line 15. Strike section 4, insert section 5. Motion was seconded by Rep. Stickney.

Rep. Addy offered a substitute amendment to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund. Motion was seconded by Rep. Wyatt.

Rep. Hannah offered to the committee an additional substitute amendment to strike Rep. Addy's substitute motion and insert $500,000 instead of $200,000. Motion seconded by Rep. Brown.

Rep. Brooke stated that she was under the impression that the amount of $200,000 was for fiscal year 1988. She was questioning whether it was for fiscal year '88 or if it was for the biennium. Cheryl Bryant stated that it was for fiscal year '88 and the amount for the biennium was roughly similar.

Rep. Brown withdrew his second to Rep. Hannah's motion, Rep. Brooke seconded.

A vote was taken on Rep. Hannah's substitute motion to replace $200,000 with $500,000 both in the title and on page 7, line 14. A Roll Call Vote was taken and the motion FAILED with 7 ayes, and 10 nays.

A Roll Call Vote was then taken on Rep. Addy's substitute motion to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund. Motion CARRIED 9 to 7.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, motion seconded by Rep. McDonough. A voice vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 108

Motion: Rep. Addy made a DO PASS motion, seconded by Rep. Wyatt.

Amendments, Discussion and Votes: Rep. Addy moved to strike paragraph 6 of the Addy, Mercer, and Rice amendments and substitute paragraph 1 of the Mercer amendment. Motion seconded by Rep. Mercer. A vote was taken and CARRIED unanimously.

Rep. Addy then moved to remove the 75,000 people per county requirement in paragraph 1 and strike all amendments contained in subsection 2. Motion seconded by Rep. Hannah.

A vote was taken on Rep. Addy's proposed amendments and CARRIED with Rep. Eudaily and Rep. Stickney voting No.

Recommendation and Vote: Rep. Addy moved DO PASS AS AMENDED, seconded by Rep. Wyatt. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 103

Motion: Rep. Brooke moved to reconsider action on HB 103, motion seconded by Rep. Nelson.

A vote was taken by the committee to reconsider previous action taken on HB 103. Motion CARRIED unanimously.

A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Strizich.

Amendments, Discussion and Votes: Rep. Brooke proposed to amend HB 103 to reinsert the language of Lines 19-21, motion seconded by Rep. Rice. A vote was taken on the amendment and CARRIED unanimously.

Recommendation and Vote: Rep. Brooke moved DO PASS AS AMENDED, motion seconded by Rep. Strizich. The motion was voted on and CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date Jan. 18, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

Amendments to House Bill No. 13
Introduced Copy

Requested by Rep. Mercer
For the Committee on the Judiciary

Prepared by John MacMaster
January 14, 1989

1. Page 4, lines 8 and 9.
Following: "death" on line 8
Strike: "was" through "inflicted" on line 9
Insert: "occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely, knowingly, or either or both, as an element of the offense"

2. Page 6, line 16.
Following: "claimant"
Insert: ", provided that the division has made all reasonable efforts to obtain from the claimant a release of the records or information"

Amendments to House Bill No. 13
Introduced Copy

Requested by Rep. Boharski
For the Committee on the Judiciary

Prepared by John MacMaster
January 14, 1989

1. Title, line 12.
Strike: "MAY"
Insert: "MUST"

2. Page 7, line 15.
Strike: "may"
Insert: "must"

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE JAN. 18, 1989 BILL NO. HB 13 NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY 6 11

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Addy's substitute motion to amend page 1, line 11 & page 7, section 4. Motion seconded by Rep. Strizich & FAILED.

Form CS-31
Rev. 1985

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE JAN. 18, 1989 BILL NO. HB 13 NUMBER 2.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO	X	
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		X
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY		X
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY 7 10

Julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Hannah's substitute motion to replace $200,000 with $500,000 both in the Title & on page 7, Line 14. Motion seconded by Rep. Brooke & FAILED.

Form CS-31
Rev. 1985

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE JAN. 18, 1989 BILL NO. HB 13 NUMBER 3.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI		X
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY	X	
REP. PAULA DARKO		
REP. RALPH EUDAILY		X
REP. BUDD GOULD		
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH	X	
REP. JOHN MERCER		X
REP. LINDA NELSON.	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY 9 7

julie Emge
Secretary

Dave Brown
Chairman

Motion: Rep. Addy's substitute motion to prohibit any money from being withdrawn allocated to the victims compensation fund to be used for the general fund. Motion CARRIED.

Form CS-31
Rev. 1985

information from the National Commission until too late to incorporate it in his bill.

Senator Beck asked if there were a list of creditors available. Rep. Spaeth said that the executor is usually a spouse or other family member who usually knows what the bills are. He seldom had a probate close where he had a an unknown claim filed.

Senator Beck asked if the bill would forever bar further claims. Rep. Spaeth said that, before the decision came down, a legal ad was run for 3 weeks. Then the creditor had 4 months in which to claim, but would be barred after that period of time. This would be a self-executing statute of limitations. Without that, settling estates may linger on unnecessarily or other statutes of limitation may apply, he said. In Oklahoma, claims were filed against the heirs of the estate. He felt it was unfair to the heirs for the estate not to be finalized within a reasonable time.

Closing by Sponsor: Rep. Spaeth closed the hearing.

HEARING ON HOUSE BILL 13

Presentation and Opening Statement by Sponsor:

Representative Joe Quilici of Butte, District 7, opened the hearing. He said the bill was a revision of the Crime Victims Compensation Act. One of the provisions was a definition of criminal injurious conduct, he said. A vehicle might be involved in an accident in which someone was accidentally hurt. That would be different from using a vehicle as a weapon to deliberately injure someone, in which case it would be defined as a weapon. The bill will allow a secondary victim to get counselling; for instance, the mother of a rape victim might be so traumatized that she needs counselling. The bill generally fine-tunes the act, he said.

List of Testifying Proponents and What Group they Represent:

Cheryl Bryant, Crime Victims Compensation

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Cheryl Bryant appeared before the committee as a proponent. She read written testimony to the committee (Exhibit 2). She also presented testimony from Barbara Kocab who had been helped by Crime Victims Compensation (Exhibit 3).

Questions From Committee Members: Senator Halligan asked if the case had to be settled before a victim could receive benefits. Cheryl said no, not for a primary victim. For a secondary victim, someone must be charged with a sexual crime.

Senator Halligan wondered if the dollar limits may have been set too low. Cheryl didn't think so. She thought if problems were encountered in the future, the law could be changed.

Senator Pinsoneault asked about securing insurance payment information. If a victim receives insurance compensation, would Crime Victims'Compensation have access to that information. She said they did need that information and would reimburse the victim for the deductible amount.

Senator Crippen commented on the retroactive applicability. He wondered what the effect would be, and said he couldn't determine that from the fiscal note. Rep. Quilici said he had talked to Cheryl Bryant who felt it should have no affect whatsoever because previous claims have been settled. Rep. Quilici said it was felt that those funds had been collected specifically for victims and should be used for that only.

Senator Crippen wondered how large the fund would get. Rep. Quilici thought it wouldn't build up more than $200,000, as it hasn't in the past. Cheryl said that in 1988, they collected approximately $410,000 from the criminal court fines and an additional $12,000 in restitution from criminal offenders. She said the program cost $403,000. A cash flow study revealed that they were in the red at times, and had extra funds at other times.

Senator Pinsoneault said he wanted to complement Cheryl Bryant on administering an excellent program in an excellent manner.

Closing by Sponsor: Representative Quilici said he would have no objections to any amendment that would make the program more workable.

DISPOSITION OF HOUSE BILL 13

Discussion: Senator Beck wondered if there shouldn't be a cap on the funds that accrued. Senator Crippen commented that the House appropriation process would have to have studied the bill. But, since no cap was placed on it, he felt there was little concern. Senator Pinsoneault added that it was a pro bono bill. The monies received are small, he said.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Harp MOVED that House Bill 13 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 168

Presentation and Opening Statement by Sponsor: Representative Tom Lee of Bigfork, District 49, opened the hearing, saying the bill was at the request of District Judge Michael Keating of Kalispell. Current law says, that unless a judge specifically requires consecutive serving of sentences, two or more sentences are to be automatically merged, so they are served at the same time. This bill reverses that procedure so that sentences will be served concurrently only by specific order of the judge. This change makes automatic the concurrent serving of two or more sentences. If there are reasons for merged sentences, the option is provided for on page 2, line 7, he said. He told an example of a man who received a long string of sentences for several convictions. Prior to that, the man had received 20 years each for arson and forgery in Missoula. But, because the judge did nothing, those sentences were merged with the sentences received in Kalispell.

List of Testifying Proponents and What Group they Represent:

John Connor, Department of Justice, appearing for the Montana County Attorneys' Association
Dan Russell, Department of Institutions

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-28-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

February 28, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 13 (third reading copy -- blue), respectfully report that HB 13 be concurred in.

Sponsor: Quilici (Lynch)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

3/2/89

3:34 p.m.

COPIES: 228

DATE 2-28-84

BILL NO. HB 13

Right now, I am having some difficulty with my insurance company regarding bills for counseling we received last June. They have said they do not pay for out-patient counseling. I believe this has been taken care of, but if the Board of Crime Control had been allowed to speak directly to them, this probably would have been resolved a long time ago.

I imagine all victims, no matter what sort of criminal act they have had to face, feel these same emotions of frustration, anger and stress.

Please look with compassion upon all victims of violent crime, and pass House Bill 13 in it's entirety.

Thank you for listening to my thoughts and concerns.

Sincerely,

Barbara Kocab

RECEIVED
JAN 20 1989

CV

SENATE JUDICIARY
EXHIBIT NO. 2A.1
DATE 2-28-89
BILL NO. HB 73

The purpose of the Crime Victims Compensation Act is to compensate and assist innocent victims who are injured or killed as a direct result of the criminal acts of others. The proposed amendments will make it easier to fulfill both of these duties. Innocent victims of crimes suffer a very traumatic experience. Dealing with the aftermath of that crime is not easy. Any method that lessens or eliminates the paperwork that innocent victims have to do on their claims is a benefit to them.

It will be easier and faster to process claims by allowing a statutory release of medical and insurance records and in some cases may be the only way to get the information needed to make payments. The claim form has a release of information on it but this is not acceptable to insurance and medical providers since the enactment of various privacy laws. The change in the law will allow the necessary information to be obtained without exposing the insurer or health care provider to liability.

The restriction on the fund balance benefits innocent victims because there will be money in the fund to pay claims. At the present time, the fund balance can be taken each year for the general fund. This amendment restricts the fund balance so it is not placed in the general fund each year by operation of law. Without this amendment, there will be no money in the fund at the beginning of each fiscal year to pay claims. Claims can't be paid until the criminal fines are collected and sent to the state treasurer. Victims would either have to wait to have the

claim paid or the Crime Victims Fund would have to borrow money each year which would have to be repaid. This amendment would ensure that there would be enough money in the fund to operate the program at the beginning of the biennium.

The elimination of the time limit on paying benefits to secondary victims will not add to the cost of the program. The restriction on those payments does not help in budgeting for this expense since the amount involved is not that great. The time limit does not aid in processing claims since there is no problem in determining if the treatment is compensable, even if the treatment is provided after the one year limit has expired. The time limit is only confusing to victims and may deprive them of benefits if treatment is provided after the one year limit.

Redefining the definition of criminally injurious conduct is of indirect benefit to innocent victims. The present definition may not be clear enough. The amended definition makes it clear what is covered and what is not. The revenue is sufficient to support the current benefits available but may not be if other types of claims are added.

Thank you.

Cheryl Bryant Crime Victims Unit

Cheryl Bryant

SENATE JUDICIARY
EXHIBIT NO. 3 att. 1
DATE 2-28-89
BILL NO. HB 13

RECEIVED
JAN 20 1989

CV

To: Members of the Judiciary Subcommittee

Re: House Bill 13

My husband, Sandy Kocab, was murdered February 27, 1988. Everything possible was done to try to save Sandy's life. The final result, however, was my husband was dead, and I was left with medical and funeral expenses resulting from the shooting, funeral arrangements to make, a business to run, legal matters, coping with the justice system, concern for our financial and emotional well-being, and my own personal grief and that of my four children.

I was relieved to know there was financial assistance available from the Board of Crime Control for medical bills and counseling. I believe, however, that the time limitation for counseling should be extended or eliminated. No one can really know the possible future effects a violent act such as this might have. I have been told my young children will feel the effects of this throughout their lives, and as they grow older and reach new levels of understanding, more counseling will probably be needed.

Even for myself, as an adult, the struggle to comprehend and understand the violent and senseless death of a loved one is at times overwhelming. Perhaps there never will be an understanding of what happened, but only the ability to cope and adjust. How will my children and I learn to cope? Maybe it will be through our own strength and the love and compassion of family and friends. If that fails, who do we turn to for help? Possibly more professional counseling will be needed to really come to terms with this.

As I look at myself, my children and other family members, I see the long, slow process of grief being hampered by the anger and bitterness of murder. Five years ago, my cousin and her husband were murdered in California. Some family members were still undergoing therapy three years later. There is no time limit to grief. There is no time limit on dealing with the devastating effects of violent crime. While much time, effort and money is spent on rehabilitating the offender, who will help ensure emotional stability and healing for the victims, the innocent ones.

It is very encouraging to see that victims have a government agency to help them and support them in times of need. The medical bills were paid for by my insurance company and the Board of Crime Control. However, it would have been much easier if the Board of Crime Control were allowed to confer directly with the insurance company and creditors. This agency should be allowed more freedom to help and assist the victims in this process. This was a very stressful time and more bills and more things to do were the last things I wanted, or even felt capable of doing. I remember feeling angry and frustrated that I was left to take care of all this, when I had harmed no one. We were the ones who were wronged, yet everything fell on my shoulders.